

KEITH LAMONT FARMER,

Plaintiff,

v.

**CPL. CHRIS PARKER,
SHERIFF DARON HALL, D.C.S.O., &
METRO GOVERNMENT,**

Defendants.

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JURY DEMAND

Case No. 3:12-cv-00489

JUDGE ALETA A. TRAUGER

Comes Defendant Chris Parker, by and through counsel, and moves this Honorable Court for an order prohibiting the introduction of evidence or any reference, either direct or indirect, whether in opening statement, jury selection, or otherwise, on the part of the attorneys for any party, the parties themselves, or any other of the parties' witnesses in this cause, to Parker's psychological examination on April 16, 2012. In support of his motion, Defendant states as follows:

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such, Parker's employment was terminated effective May 7, 2012. Shortly thereafter, the DCSO reinstated Parker and placed him on an injury on duty (IOD) pension. Any mention in documents or by Plaintiff, his attorneys, or any witnesses regarding the psychological examination on April 16, 2012, is not relevant to any issue in this matter and would serve to confuse the issues and/or mislead the jury, thereby causing unfair prejudice to Defendant.

As a pre-trial detainee, the Fourteenth Amendment is the source of Plaintiff's excessive force claim. Shreve v. Franklin County, Ohio, 743 F.3d 126, 133 (6th Cir. 2014). Accordingly, the primary issue for trial is whether the evidence proves that during the use of force incident on January 22, 2012, Parker "acted maliciously and sadistically for the very purpose of causing harm rather than in a good faith effort to maintain or restore discipline." Id. at 134 (quoting Burgess v. Fischer, 735 F.3d 462, 473 (6th Cir. 2013)). The psychological examination is not relevant to this excessive force inquiry because it has nothing to do with Plaintiff or Parker's actions during the incident on the morning of January 22, 2012. The psychological examination took place nearly three months after the incident. Further, it allegedly confirmed a diagnosis of PTSD that was caused by two incidents at work that were entirely unrelated to Plaintiff.

Even if the psychological examination is somehow relevant, the probative value of such evidence is substantially outweighed by the danger of unfair prejudice, confusing the issues, and/or misleading the jury. See Fed. R. Evid. 403. For example, Defendant's attorneys expect that Plaintiff will seek to introduce into evidence the aforementioned letter from Ms. Black in order to prove that Parker was not qualified to be a correctional officer based on the results of the examination. However, this letter contains no probative value since it is self-serving and does not provide details or actual opinions from the treating

physician to support its conclusory assertions. In fact, the actual report from the psychological examination has not been produced by Plaintiff in discovery. Therefore, the statements in the letter from Ms. Black concerning the results from the examination cannot be verified and constitute inadmissible hearsay. Accordingly, any mention of the psychological examination or the results thereof would unfairly prejudice the Defendant by misleading the jury into believing that Parker was in fact unfit for duty at the time of the use of force incident on January 22, 2012.

Based on the foregoing, Defendant moves this court to exclude introduction of any evidence or any reference to the psychological examination on April 16, 2012, and give an instruction to the attorneys and the parties not to reference or attempt to introduce such evidence.

Respectfully submitted,

**LEITNER, WILLIAMS, DOOLEY
& NAPOLITAN, PLLC**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via electronic means via the Court's electronic filing system to:

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this the 28th day of March, 2014.

By: s/D. Randall Mantooth
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